A BILL

To amend section 3746.02 and to enact section 3746.122 of the Revised Code to establish an affirmative defense to a release or threatened release of hazardous substances from a facility for certain bona fide prospective purchasers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3746.02 be amended and section 3746.122 of the Revised Code be enacted to read as follows:

Sec. 3746.02. (A) Nothing in this chapter applies to any of the following:

(1) Property for which a voluntary action under this chapter is precluded by federal law or regulations adopted under federal law, including, without limitation, any of the following federal laws or regulations adopted thereunder:


(c) The "Toxic Substances Control Act," 90 Stat. 2003


(2) Those portions of property where closure of a hazardous waste facility or solid waste facility is required under Chapter 3734. of the Revised Code or rules adopted under it;

(3) Except as provided in division (A)(3) of section 3737.88 of the Revised Code, properties that are subject to rules adopted by the fire marshal under Chapter 3737. of the Revised Code pertaining to corrective actions as defined in section 3737.87 of the Revised Code;

(4) Property that is subject to Chapter 1509. of the Revised Code;

(5) Any other property if the director of environmental protection has issued a letter notifying the owner or operator of the property that the director will issue an enforcement order under Chapter 3704., 3734., or 6111. of the Revised Code, a release or threatened release of a hazardous substance or petroleum from or at the property poses a substantial threat to public health or safety or the environment, and the following applies:

(a) The person subject to the letter does not present sufficient evidence to the director that the person has entered into the voluntary action program under this chapter and is proceeding expeditiously to address that threat.
(b) The person cannot demonstrate the person is a bona
fide prospective purchaser under section 3746.122 of the Revised
Code. For

For the purposes of this division, the evidence
consisting sufficient evidence of entry into the voluntary
action program under this chapter shall be defined by the
director by rules adopted under section 3746.04 of the Revised
Code.

(B) The application of any provision of division (A) of
this section to a portion of property does not preclude
participation in the voluntary action program under this chapter
in connection with other portions of the property where those
provisions do not apply.

(C) As used in this section, "property" means any parcel
of real property, or portion thereof, and any improvements
thereto.

Sec. 3746.122. (A) As used in this section, "bona fide
prospective purchaser" and "facility" have the same meanings as

(B) In a civil action to address a release or threatened
release of hazardous substances from a facility, it is an
affirmative defense, and a person is immune from liability to
this state for performing investigational and remedial
activities, if all of the following apply:

(1) The person demonstrates that the person is a bona fide
prospective purchaser of the facility.

(2) The state's cause of action against the person rests
upon the person's status as an owner or operator of the
facility.
(3) The person does not impede a response action or a natural resource restoration at the facility.

(C) Nothing in this section precludes the application of section 3746.02 of the Revised Code to this section.

Section 2. That existing section 3746.02 of the Revised Code is hereby repealed.